

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB EX PARTE NO. 431 (Sub-No. 3)**

**REVIEW OF THE SURFACE TRANSPORTATION BOARD'S GENERAL COSTING SYSTEM**

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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
ANSWERS TO BOARD QUESTIONS REGARDING  
THE BOARD'S RESPONSIVENESS**

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**Dated: June 1, 2009**

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ANSWERS TO BOARD QUESTIONS REGARDING  
THE BOARD'S RESPONSIVENESS**

Arkansas Electric Cooperative Corporation (AECC) 1/ hereby responds to questions raised by Vice Chairman Nottingham during the testimony of Steve Sharp, AECC's Principal Engineer – Fuels & Civil, at the public hearing conducted on April 30, 2009, pursuant to the Board's notice dated April 6, 2009. Vice Chairman Nottingham's questions concerned the responsiveness of the Board to AECC in this proceeding and in a previous matter. 2/

**Background**

At the public hearing, Mr. Sharp observed that AECC had not yet received a response to an email request it had submitted to the Board for information regarding URCS. This evoked a response from Vice Chairman Nottingham, who observed a

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1/ AECC's interests in this proceeding were described in "Written Submission of Arkansas Electric Cooperative Corporation" (April 23, 2009).

2/ Under separate cover, AECC is submitting follow-up comments on technical issues related to the Uniform Railroad Costing System (URCS), and to the Board's determination of whether and to what extent modifications to URCS are needed.

similarity to a previous situation involving AECC and the Board. Background information regarding both of these episodes is provided below.

Current URCS Proceeding – In this proceeding, the Board's notice provided a period of 17 calendar days for parties to prepare written comments in advance of the public hearing. As described by Mr. Sharp at the hearing, AECC had not previously been involved to any significant degree in URCS issues before the Board. It has only become interested in the URCS methodology as a result of the Board's elimination of so-called "movement-specific adjustments" to URCS in rail rate cases, and the impacts of the mandated use of unadjusted URCS on the results of the recent KCPL/Montrose rate case. Neither AECC nor its outside advisors were in possession of detailed technical information regarding the URCS methodology at the time of the Board's notice.

Based on the timeframe provided by the notice, AECC inferred that the Board was seeking comments at a conceptual level, rather than a highly detailed technical level. Nevertheless, in order to ensure the validity and utility of its comments, AECC undertook to locate available documentation of URCS analysis procedures.

First, AECC consulted the Board's website. While the "URCS" portion of the website conveniently provides copies of the Phase III movement costing program and associated documentation, AECC was unable to locate documentation or data associated with the underlying URCS analyses, including the Phase I regressions. However, from the "E-Library", AECC was able to retrieve and review two previous

decisions in Ex Parte No. 431, which documented the changes that the Board made to the preceding version of URCS in 1997.

Outside of the Board's website, AECC conducted internet searches for copies of URCS documentation, as well as for alternative sources that would provide credible descriptions of the URCS methodology. While the searches for URCS documentation were unsuccessful, the searches for alternative sources yielded a paper sponsored by FRA that was published after the last change in the URCS methodology of which AECC was aware. <sup>3/</sup> AECC proceeded with drafting its written submission, relying primarily on the descriptions of the URCS methodology contained in that paper as needed on technical issues.

As the deadline for the written submissions approached, AECC on April 20, 2009 made two final attempts to obtain copies of documentation for URCS Phase I. These included contacting another expert, who was understood to have worked in the original development of URCS, and conducting a final internet search. While the expert did not have the documentation, the internet search indicated a possible source AECC had not previously tried that could be reached via the "FAQs" portion of the Board's website.

Due to the effects of malicious computer code in the browser of the computer used for this search, only the "cached" copy of the webpage (not necessarily the current version, but generally a recent version) could be viewed at the time of the

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<sup>3/</sup> See Wilson, W. and J. Bitzan, "Costing Individual Railroad Movements", prepared for Federal Railroad Administration (September 2003).

search. That copy provided an email link to warrenj@stb.dot.gov. AECC's transportation consultant, Michael Nelson, submitted the email shown in Exhibit A to that address (which was the same as the address from which Mr. Nelson had ordered a copy of the URCS Phase III program in August 2007 before the Board offered direct downloads of that program from its website.) Mr. Nelson had no reason to think that this email address was not still valid, and the Board's email server provided no indication that the address was invalid or that the email was otherwise undeliverable.

Given that the email was submitted in the evening on Monday April 20, AECC did not consider it noteworthy that no response had been received before the filing of AECC's written submission on Thursday April 23. However, when no response had been received by the time of the public hearing on April 30, Mr. Sharp mentioned it at the hearing.

Previous Situation – Mr. Sharp's comment at the public hearing spurred Vice Chairman Nottingham's recollection of another situation in which AECC had lodged a complaint about the absence of a response from the Board. Almost exactly one year before Mr. Nottingham joined the Board, AECC on August 12, 2005 submitted a letter to then-Chairman Nober addressing inaccurate public statements made by railroad personnel regarding the causes of the infrastructure failure and throughput problems that arose on the Powder River Basin (PRB) Joint Line in May 2005. This letter showed that while the railroads had claimed that the Joint Line problems were attributable to extraordinary weather conditions, data from authoritative, published sources demonstrate that the weather conditions were not extraordinary, or even materially

different from historical averages. Without the excuse of extraordinary weather, it was evident that the railroads – apparently in response to pressures from the investment community for short-term financial results - had deferred routine maintenance that would have prevented problems caused by the highly-visible build-up of coal dust on the Joint Line roadbed. The resulting in-service failure of the Joint Line infrastructure produced massive adverse economic impacts off any scale of comparison with whatever the cost of a proper Joint Line maintenance program would have been.

A copy of the letter sent by Mr. Gary Voigt, President and CEO of AECC, to former STB Chairman Nober regarding this issue is attached as Exhibit 2. No reply to this letter was received from Chairman Nober. Instead, more than 3 months later, Mr. Voigt received a response from BNSF (see Exhibit 3). The content of this response (which included a misleading comparison between precipitation in 2005 and the drought conditions prevailing in 2004 rather than historical averages) did not alter the basic conclusion that the throughput problems of 2005 resulted from insufficient maintenance, and not from extraordinary weather conditions or any other factors outside the control of the railroads.

AECC brought this situation to the Board's attention after Mr. Nottingham's appointment as Chairman in August 2006, and he expressed a commitment to AECC that under his leadership the Board would listen and respond directly to shippers. Subsequent to that meeting, Mr. Sharp, in testimony before a Congressional committee, described Chairman Nober's handling of AECC's letter (in 2005) without also describing Chairman Nottingham's subsequent assurances.

## **Discussion**

Mr. Sharp's comment during the April 30 public hearing was an honest and reasonable statement of AECC's experience in seeking information about the technical details of URCS. Although railroads may have intimate knowledge of the technical details of URCS, rail customers, like AECC, generally do not. In order to provide useful comments to the Board within the short time frame established by the Board's schedule in this matter, AECC and its consultant made diligent efforts to find sources of this information, including searching the Board's website (where one would normally expect to find such information, or at least pointers to its location). In fact, the Board's website currently does not appear to provide a direct contact for technical information about URCS in either the URCS or FAQs areas. However, AECC's consultant found a reference to such a contact on a "cached" version of the webpage and had no reason to think that this contact information was no longer valid. Therefore, AECC made a specific request for this information to what appeared to be an appropriate STB email address; at the time of the April 30 hearing, 10 days had passed without any response to this request, and Mr. Sharp thought that this situation should be brought to the Board's attention. The implication of Vice Chairman Nottingham's comments at the hearing – i.e., that AECC was making false or misleading characterizations of its experiences with the Board - was unwarranted. As a frequent participant in Board proceedings, AECC regularly depends on the Board to give fair consideration to the comments and evidence it submits, and it would be counter-productive for AECC to present unfounded criticisms of the Board's responsiveness.

Similarly, AECC's Congressional testimony about then-Chairman Nober's handling of AECC's 2005 letter about service problems on the Joint Line was an honest and reasonable statement about the Board's failure to pay attention to relevant information that AECC had provided. AECC acknowledges and appreciates then-Chairman Nottingham's disavowal of the prior Chairman's actions, and his stated commitment to listen carefully to shipper input. However, from the time of that commitment, through the time of Mr. Sharp's Congressional appearance, and all the way up until the present, the Board has still neither accepted nor provided a rationale for rejecting the substance of the information about the problems on the Joint Line that AECC sought to bring to the attention of Chairman Nober in 2005. Indeed, despite AECC's submission of its weather documentation to the Board and its discussion of this issue in multiple Board proceedings, the Board in November 2008 accepted a report from Christensen Associates that glossed over the maintenance work required on the Joint Line with the patent falsehood that it had been caused by the Joint Line derailments. <sup>4/</sup> Given that the derailments involved a combined total of 43 cars at two specific locations, attributing the deferred maintenance of basically the entire Joint Line (understood to involve over 160 miles of track) to the derailments is beyond ludicrous.

Even the more recent Christensen study, which generally deserves high marks for its role in exposing specious industry arguments regarding capacity issues,

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<sup>4/</sup> See Laurits R. Christensen Associates Inc., *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition*, Volume 2, "Analysis Of Competition, Capacity, and Service Quality" (November 2008) at page 12-4.

simply parrots the industry party line that the weather caused the PRB throughput problems. <sup>5/</sup> As usual, this assertion is not backed up with any data. Moreover, it is not accompanied by any credible explanation of how the simple accumulation of rain or snow could destroy the functionality of a properly-maintained rail line (absent physical interference from a washout, mudslide, avalanche, etc., for which no evidence was offered).

Since 2005, the Board has been in possession of documentation supplied by AECC that demonstrates the root cause of the Joint Line infrastructure failure was myopic and imprudent rail management, and not weather, derailments, or any other smokescreens that the industry may offer. For the Board to be properly responsive to shippers, it must do more than just listen to what the shippers say. True responsiveness involves giving actual weight to shipper input when it is valid, and giving reasonable explanations to shippers when their input is rejected. As long as the Board continues to take the position that unsupported assertions from the railroads and their apologists take precedence over unrebutted data and analysis from shippers, the Board should not expect much shipper support before Congress or elsewhere.

The harsh reality for coal shippers is that in the wake of the massive economic and logistical disruptions caused by the failure of the railroads to take appropriate steps to maintain the functionality of the Joint Line, the Board so far has basically done nothing constructive. Now, of course, the railroads have performed the

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<sup>5/</sup> See Laurits R. Christensen Associates Inc., *Supplemental Report to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment* (March 2009) at page 2-15.

routine but deferred maintenance that was needed, and have become all interested in profiling loads, and applying toppings, and putting “diapers” on bottom dump cars to measure leakage, and identifying whose mines produce the dusty coal, and all of the other things that they should have long ago been investigating. Yet the Board has done nothing significant to discourage the railroads from repeating the myopic management decision-making that caused this problem (a distinct risk in light of the abnormally high rates the railroads were able to command in the artificial capacity shortage that was created in 2005).

In the first 15 years under the Staggers Act, carriers and shippers shared great benefits from the introduction of competitive market forces under the stewardship of the ICC. However, for the last 14 years – dating almost precisely from the time this Board was created – shippers have borne the brunt of anti-competitive mergers, massive service failures, and competition-restricting Board policies (bottleneck rule; competitive access; etc.). While the data now show the industry didn’t need to be protected from competition during this time period, and may actually have been hurt by the inefficiencies spawned in this environment, the Board has only recently begun to show any indication that it may be prepared to revisit competitive ground rules. 6/

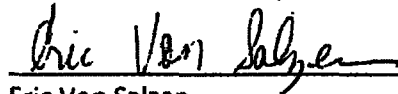
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6/ To be fair, the Board’s actions on fuel surcharges and rate case simplification appear to have been constructive, but it remains to be seen whether the Board is actually going to take effective action with respect to challenges to paper barriers, the URCS reforms that in many instances will govern the effectiveness of the rate case changes, and even technical issues regarding the extent to which the exercise of market power will be allowed to influence the computation of the rail cost of capital.

As discussed at the opening of the URCS hearing, AECC has been a "hard core" participant in numerous Board proceedings. To the best of its ability, AECC has presented facts, analyses, and evidence to assist the Board in carrying out its duties as the guardian of the public interest and promoter of "sound economic conditions in transportation". With all due respect to the concerns voiced by Vice Chairman Nottingham, the issue is not that AECC spoke the truth before Congress regarding its experience with a past Board chairman. The issue is that the current Board has inherited from its forbearers a history of questionable policies and precedents on fundamental competitive issues, of which the past Chairman's treatment of AECC was only a symbol. While AECC remains committed to supporting the Board's fulfillment of its missions, it believes the Board must begin to take meaningful remedial actions on fundamental competitive issues.

Respectfully submitted,

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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
SUPPLEMENTAL COMMENTS AND ANSWERS TO BOARD QUESTIONS  
REGARDING COSTING ISSUES**

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REGARDING COSTING ISSUES**

Arkansas Electric Cooperative Corporation (AECC) 1/ hereby responds to questions raised by the Board during the public hearing conducted on April 30, 2009, pursuant to the Board's notice dated April 6, 2009. This document addresses technical issues regarding the Uniform Railroad Costing System (URCS), and the Board's determination of whether and to what extent modifications to URCS are needed. 2/ Because of AECC's direct interests in matters that affect the transportation of coal from the Powder River Basin (PRB), these comments have a particular focus on the accurate costing of unit train movements. 3/

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1/ AECC's interests in this proceeding were described in "Written Submission of Arkansas Electric Cooperative Corporation" (April 23, 2009).

2/ Under separate cover, AECC is submitting responses to questions posed by Vice Chairman Nottingham regarding the responsiveness of the Board to AECC in this proceeding and in a previous matter.

3/ In focusing on costing issues associated with such movements, AECC does not assert or imply that refinements related to other types of traffic may not also be warranted.

**AECC's specific follow-up comments are as follows:**

**Value being computed** – One of the fundamental issues brought up at the hearing involved the nature of the value to be computed by the costing methodology. AECC believes that the use of long-run marginal costs, as discussed at the hearing, would be consistent with applicable theory, and would satisfy the Board's mandate under Section 10101(5) "to foster sound economic conditions in transportation". Among other considerations, long-run marginal costs assume infrastructure is sized appropriately for a given volume. This is consistent with the guidance of Section 10101(9) "to encourage...efficient management of railroads". Also, it is a proper measure to support satisfaction of the requirement under Section 10701(d)(2)(A) that the Board consider "the amount of traffic which is transported at revenues which do not contribute to going concern value".

**Refine vs. replace URCS** – A portion of the discussion at the hearing addressed the issue of whether the prospective scope of changes to URCS would constitute a refinement or a replacement of the current methodology. However the changes may be characterized, they need to address a fundamental conflict between the reliance on system-average values in the current URCS, and the substantial growth over time of different types of rail traffic that possess widely divergent operating and cost characteristics. Using two obvious examples, coal unit trains and intermodal differ substantially from each other, as well as from traditional way/through train operations. Even within a major category like coal unit trains, the operating and cost characteristics

of PRB coal movements may differ substantially from movements of coal in other areas, etc..

To yield accurate results, the cost analysis needs to reflect in a reasonable way identifiable differences in the cost characteristics associated with different traffic types. One way to accomplish this is to introduce in the underlying econometric analyses more flexible functional forms that accommodate nonlinear relationships, as discussed at the hearing, as well as a broader array of independent variables that enable the models to identify and measure directly differences in the cost characteristics of broad traffic groups. <sup>4/</sup> This is particularly important in light of the operational interference among different service types that the railroads have highlighted frequently in discussions of capacity issues. If, for example, the dispatch priority of intermodal service causes bulk unit trains to be held on sidings so intermodal trains can meet their schedules, it would not be valid to analyze cost drivers, like gross ton-miles, train-miles, etc., without differentiating according to the type of movement to which they are being applied. If a portion of crew and locomotive costs on low-priority movements is incurred because of requirements imposed by higher-priority movements, "commodity-neutral" cost drivers will not reflect accurately the causality of costs.

**Extension to movement-level costing** – In costing at the individual movement level, one size does not fit all any better than it does at the aggregate level.

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<sup>4/</sup> See, for example, Wilson, W. and J. Bitzan, "Costing Individual Railroad Movements", prepared for Federal Railroad Administration (September 2003) ("Wilson/Bitzan").

Even within a given category of traffic, numerous factors may cause differences among the costs incurred by specific movements.

At least one of AECC's plants is served in a manner that does not appear to fit the current URCS "mold". The Independence plant at Newark, AR receives PRB coal via a UP route south of Kansas City that travels through Wagoner, OK and Little Rock, AR. However, the empty trains are moved from the plant back to UP (at Kansas City) via the Missouri and Northern Arkansas Railroad (MNA). The mileage difference between the two routes is approximately 167 miles. The use of different routes for loaded and empty movements is one of many ways in which specific moves may differ from one another in the incurrence of costs.

Several witnesses at the hearing observed that the current URCS contains menu options for refining cost estimates based on the detailed operating characteristics of individual movements, but that the Board does not permit use of these options in rate reasonableness proceedings. As long as the URCS menu options reasonably reflect cost causality, there is no discernible rationale for the Board to limit their use. Indeed, the Board's mandate under Section 10101(13) "to ensure the availability of accurate cost information in regulatory proceedings" weights heavily in favor of maximizing, rather than limiting, use of such options.

Input substitutability – At the public hearing, Chairman Mulvey posed a question regarding the reference to "input substitutability" contained in AECC's written submission dated April 23, 2009. In this context, "input substitutability" refers to changes in the mixes of factor inputs that may be undertaken by rail management in

response to such considerations as changes in factor prices. For example, an increase in rail fuel prices could hypothetically cause rail management to take a step such as reducing operating speeds (i.e., to reduce fuel consumption). This would effectively substitute increased crew and locomotive hours for a portion of the prior fuel use. Input substitutability is analyzed in the study submitted to the Board by Christensen Associates in November 2008. Based on the Wilson/Bitzan analysis, AECC believes that the current model structure of URCS does not properly account for this issue.

Road property investment – Considerable discussion at the hearing was devoted to road property investment, and the assumption that such investment is 50 percent variable with volume. This parameter may be difficult to measure reliably through econometric methods, since road property investment does not necessarily bear a consistent relationship to volumes in any given time period. In one set of circumstances, low volumes could lead to low or no investment, due to cash flow considerations or strategic issues – e.g., if a line is a potential candidate for abandonment. On the other hand, periods of high volumes may also be associated with limited road property investment –e.g., to avoid line outages during peak periods. Any attempt to use econometric methods to estimate this parameter should be cautious of such considerations.

On the other hand, the foundation for the 50 percent variability figure is unclear, and warrants careful scrutiny. As an alternative or complement to econometric methods, it is likely that engineering analyses could shed useful light on two considerations that likely influence the “true” variability figure. Those are (a) the “wear”

on road property caused by the passage of GTM's or other volume-related cost drivers; and (b) the effect of volume on the relationship between track-miles and route-miles (i.e., the need to have more or less passing sidings and yard track as volume changes).

**Fuel costs** – A second cost component that may achieve only limited accuracy through econometric methods is fuel costs. While econometrics may well provide valid and useful insights regarding differences in fuel intensiveness between major traffic groups, considerable variation would remain at the movement level within the universe of heavy-haul traffic. As described in further detail in comments submitted by AECC in the Board proceeding that addressed rail fuel surcharge practices, "...even within the same railroad, fuel use for loaded [PRB coal] trains moving in one corridor vs. another can differ by a factor of (approximately) 2."<sup>5/</sup> As is the case with road property investment, it is possible that important improvements in costing accuracy can be achieved using engineering analyses, which can support the estimation of rail fuel use for individual movements. Given the large and growing proportion of rail traffic moved in unit trains, the controversy regarding rail fuel surcharge practices, and the standard established by the Board that fuel surcharges should reasonably reflect actual fuel use, the Board should consider incorporating a fuel-use estimation "module" in the movement-level costing program, at least for unit trains.

**Proprietary information** – While not disputing the Board's observations that they are in the best position to comment on the validity of rail costs and costing

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<sup>5/</sup> STB Ex Parte No. 661, Rail Fuel Surcharges, "Comments of Arkansas Electric Cooperative Corporation" (October 3, 2006) at pages 4-6.

methods, railroad representatives at the hearing expressed strong reservations at the prospect of sharing their own internal costing procedures. Without attempting to separate possible legitimate concerns from a possible carrier predisposition to keep shippers (and the Board) in the dark regarding actual costs, AECC notes that there may be reasonable sources available for some applications that would not require the railroads to divulge their in-house methods.

For example, engineering information pertinent to the costing of road property investment may be available from the publications and/or commercial products offered by rail engineering consultants. Indeed, a study placed in the public domain by a noted rail engineering consulting firm was instrumental in exposing the fallacy of an intuitively-plausible but factually incorrect argument made by the industry to this Board regarding the rail wear associated with heavy-haul unit coal train operations. <sup>6/</sup>

In the same vein, AAR has developed an analytical tool to estimate rail fuel use on individual movements known as the "Train Energy Model", or "TEM". Holding aside any confidential information that a railroad might decide to use as input to this model in its internal applications, it is difficult to see how the model itself, which historically has provided the industry standard for fuel use assessment on individual movements, could violate any of the competitive or strategic concerns itemized by the railroads at the hearing. Notwithstanding the fact that AAR suspended licensing of the

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<sup>6/</sup> See STB Ex Parte No. 672, Rail Transportation of Resources Critical to the Nation's Energy Supply, "Supplemental Written Submission of Arkansas Electric Cooperative Corporation" (December 28, 2007) at page 15.

TEM to the general public when the Board undertook its fuel surcharge investigation, the Board's mandate under Section 10101(13) "to ensure the availability of accurate cost information in regulatory proceedings" trumps the AAR's transparent wish to hinder shippers from accessing the information needed to fully implement the "actual use" standard articulated by the Board in Ex Parte No: 661.

**Impacts of costing refinements – Discussion at the public hearing**

included questions regarding the impacts of prospective costing refinements. Obviously, to the extent that current costing methods are inaccurate, refinements that improve accuracy are likely to change the numerical results. If, for example, high productivity moves receive an improperly large distribution of costs under the current methodology, such moves will be found to have lower costs, and vice-versa.

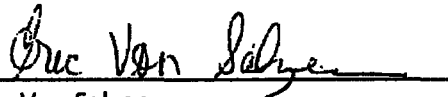
In the bigger picture, it is certainly possible that the overall level of variable costs would change. If variable costs declined, for example, this would bring more rates under regulatory jurisdiction (because any given rate would have an increased R/VC) and increase the effectiveness of rate case constraints where the SAC constraint is less than the 180 percent R/VC threshold.

If the URCS refinements changed overall variable cost levels, it would be up to Congress to determine whether to alter the jurisdictional threshold. On the one hand, shippers who are sensitive to the issue of "re-regulation" have been hesitant to promote change that would bring more traffic under the Board's jurisdiction. On the other hand, from an economic perspective, there is no rationale for railroads to retain a safe haven on rates at such time as revenue adequacy has been achieved and

supracompetitive earnings are accruing. Whatever the numerical changes might be, the biggest single impact of URCS refinements would be the more effective satisfaction of the Board's mandate under Section 10101(13) to supply accurate cost information.

Respectfully submitted,

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Transportation Consultant

Counsel for Arkansas Electric Cooperative  
Corporation

June 1, 2009

**Exhibit A**

**Copy of email Submitted to Board**

**From:** Mike Nelson [mailto:mnelso6@berkshire.rr.com]  
**Sent:** Monday, April 20, 2009 7:10 PM  
**To:** 'warrenj@stb.dot.gov'  
**Subject:** URCS

Could you please tell me what documentation is available regarding the URCS Phase I variability study?

Thanks.

**Mike Nelson**  
**Transportation Consultant**

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**(413) 684-2044**

**Exhibit B**

**Letter from Gary Voigt (AECC) to Roger Nober (STB)**



## **Arkansas Electric Cooperative Corporation**

Your Touchstone Energy Cooperative



8000 Scott Hamilton Drive  
P.O. Box 194208  
Little Rock, Arkansas 72219-4208  
(501) 570-2200

August 12, 2005

The Honorable Roger P. Nober, Chairman  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-001

Re: Railroad letters about fall peak service plans

Dear Chairman Nober:

Arkansas Electric Cooperative Corporation (AECC) is a generation and transmission cooperative providing electric generation and transmission services for the 17 rural electric distribution cooperatives in Arkansas. Our member cooperatives in turn serve their approximately 430,000 members by providing reliable and economic retail electric service. AECC uses coal, natural gas and fuel oil to generate this electric energy. We also utilize hydroelectric generation when available and purchase power when it is economical to do so.

Coal fuels the majority of AECC's generation. AECC's coal-fired generating plants are jointly owned with other utilities, and were designed to burn the abundant and clean burning sub-bituminous Powder River Basin (PRB) coal found in Wyoming and Montana. The plants in which we have an ownership interest normally consume in excess of 14 million tons of PRB coal each year. For transporting this coal to our Arkansas plants we have depended on the railroads since the late 1970's. AECC is currently in a dilemma with respect to quality rail transportation service.

AECC appreciates your efforts last year and again this year to get the railroads to publicly say how they plan to deal with the peak demand for their transportation services. The information presented by the railroads gives us some indication of how the railroads are approaching the problems we are experiencing with rail transportation. The recognition bestowed upon the Board by the Congressional Budget Office highlights the way actions by the Board can improve performance for railroads and customers alike.

Of particular importance this year, the peak planning process enables the Board to examine the railroads' efforts to satisfy the needs of PRB coal users in the context of other peak period demands. This, in turn, may enable the Board to identify further steps it could consider to further improve the situation for railroads and their PRB coal customers.

As you know, to move PRB coal to plants in Arkansas, the only options currently available involve the BNSF Railway (BNSF) and/or Union Pacific (UP). One of AECC's plants is completely captive to UP. For these reasons, AECC focuses primarily on the BNSF and UP letters.

BNSF and UP both emphasize the way the requirements of the investment community influence their actions regarding capacity. BNSF's Matthew Rose states, "...there are significant financial constraints that will not allow BNSF...to invest in sufficient capacity." UP's Dick Davidson says, "...we expect to invest in new capacity as returns on investment justify, given the revenues we are able to earn in the marketplace and the constraints that government actions place on them." Basically, the railroad position seems to be that if there's enough traffic paying high enough rates, they'll be able to supply enough capacity. The corollary to that seems to be that everyone should expect that they're going to need more revenue if the needed capacity is to materialize.

AECC is keenly aware that the railroads do not currently have the infrastructure needed to deliver the products they have contracted to transport. Even before the Joint Line situation arose, our plants did not receive all the coal transportation obligated under contract in 2004. This situation was made much worse by the crisis that began in mid-May this year on the PRB Joint Line. The railroads have indicated that this shortfall in deliveries will continue through 2005 and may even continue into 2006. Furthermore, they have indicated they will not make up these shortfalls.

This lack of performance by the railroads places a very heavy financial burden on our members and other electric consumers in Arkansas and elsewhere. AECC and the other plant owners have had to restrict the amount of coal that is being burned at our coal-fired power plants. AECC has an obligation to serve its members. Therefore, we are providing the needed electrical generation from other, much more expensive, sources. Our members, the electric consumers, are the ones who ultimately must pay the higher price.

This is the third time in the last twelve years that we have had to place burn restrictions on our coal-fired power plants due to an inability on the part of the railroads to satisfy their contractual and/or common carrier obligations. If anything, we are experiencing shortfalls of increasing severity and duration. Given the huge growth in PRB volumes that occurred during this time, AECC believes that neither coal shippers nor the Board can rely on the proposition that the railroads and the investment community, left to their own devices, will automatically supply adequate capacity.

A closer look at the origins of the current Joint Line problem demonstrates the dangers associated with this approach. BNSF and UP have both asserted that the cause of the PRB Joint Line crisis this year was the "unusual" and "unprecedented" amounts of snow and rainfall acting upon accumulated coal dust. In checking National Oceanic and Atmospheric Administration (NOAA) data for this portion of Wyoming, we find no truth in these assertions. For example, the historical average amount of moisture received in May, expressed in inches of water, is 2.50 inches for Douglas, WY (near the south end of the Joint Line) and 2.95 inches for Gillette (near the north end). In May of 2005, Douglas received 2.55 inches, just 0.05 inches above average. At the same time, Gillette received 2.89 inches or 0.06 inches below average. Both locations received less than average precipitation in April 2005. For the entire precipitation cycle beginning October 1, 2004, there appears to be no part of the Joint Line that received abnormally high precipitation.

Given that the weather really was neither "unusual" nor "unprecedented", the problem can properly be seen as the failure of the railroads to maintain the Joint Line roadbed in useable condition. As UP's letter indicates, the accumulation of coal dust was not hidden, at least not from those responsible for operating and maintaining the line. Rather, the evidence suggests strongly that the railroads chose to simply let the dust accumulate rather than take the steps needed to maintain the roadbed.

Deferring maintenance might be understandable if the line in question were a marginal branch line that didn't cover its costs. However, the PRB Joint Line is one of the busiest rail lines in the world. In maximum rate reasonableness cases, the Board has found that this facility generates traffic that "pays its own way" in terms of covering operating costs and providing a market rate of return on the capital associated with the relevant portions of the rail network. The railroads cannot credibly assert that the volumes or rates associated with PRB coal traffic are insufficient to justify proper maintenance of the Joint Line.

What coal shippers and the Board are left with is the apparent willingness of the railroads to "bet the rent" that the drought of recent years in eastern Wyoming would continue, and let their bottom line results be inflated by the "savings" associated with not maintaining the line. Unfortunately, pressure from the investment community to produce favorable results in the short term can lead to this type of myopic decision-making. Coal shippers, who are here for the long term, need the Board's help to send a clear message to the investment community and to railroad management: The public interest does not permit this type of trifling with the rail network in the name of short-term gains.

With the repeated and ongoing problems associated with moving PRB coal to our plants, AECC and others looking for reliable and economical fuel supply for electric generation are being forced to look at alternative fuel supplies, many of which do not involve the railroads at all. Current and future power plants may make much greater use of locally available lignite and petroleum coke or fossil fuels from Central and South America. Needless to say, actions by the railroads that push users of America's most abundant and economical energy resource to convert to more expensive imported fuels cannot be viewed as being consistent with the public interest.

AECC is still evaluating specific potential steps that may be warranted in light of the Joint Line problems and the responses we have received to date from the railroads regarding our efforts to adapt to the PRB shortfall. In some cases those efforts involve rail transportation of coal from non-PRB sources, which should not be affected by the Joint Line problems or any associated embargoes. Unfortunately, we may need the Board's help to get the rail service we are entitled to under contract and/or the common carrier obligation of railroads. We can assure the Board that any action we ultimately request will be consistent with the Board's mandate to protect the public interest regarding the rail network, and with legitimate capacity issues the railroads may have associated with the provision of service to all of their customers during the peak period.

AECC appreciates very much the opportunity to submit these comments for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Voigt', with a horizontal line extending to the right.

Gary Voigt

President and Chief Executive Officer  
Arkansas Electric Cooperative Corporation

**Exhibit C**

**Letter from Gregory Fox (BNSF) to Gary Voigt (AECC)**

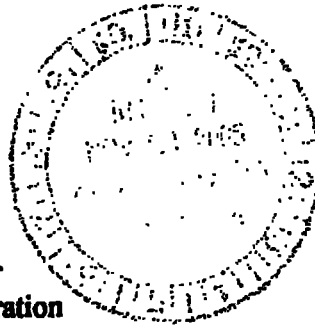


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Fort Worth, TX 76161-0034  
2800 Lou Menk Dr.  
Fort Worth, TX 76131  
Phone: (817) 382-1933  
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November 18, 2005

Gary Voigt  
President and Chief Executive Officer  
Arkansas Electric Cooperative Corporation  
8000 Scott Hamilton Drive  
P. O. Box 194208  
Little Rock, Arkansas 72219-4208



cc: Bob L  
Maurice  
Steve Sharp

**Re: Railroad Letters About Fall Peak Service Plans**

Dear Mr. Voigt:

The purpose of this letter is to correct the inaccuracies contained in your correspondence of August 12, 2005, to Roger Nober, Chairman of the Surface Transportation Board. Although BNSF does not have a contractual relationship with AECC, BNSF has been moving a small percentage of the total amount of coal destined to the White Bluff station over the last four years under an agreement with Entergy that ends in 2006. While this may be the third time in the last twelve years that AECC has had to place burn restrictions on your coal-fired power plants, it is worth noting that the western railroads have provided reliable and economic service from the PRB to White Bluff and Independence power plants for over 30 years. BNSF will continue to abide by its contractual obligations with Entergy until the end of the contract term.

In your letter, you assert that the current problems being addressed by BNSF in the PRB occurred because of deferred maintenance on the Joint Line. That assertion is simply untrue. There has been no deferred maintenance on the Joint Line and track quality has been higher than ever. Using minutes of slow orders on the Joint Line as a measure of track condition, the average daily minutes of slow orders in 2004 was 36% less than 2003. During the First Quarter of 2005, we made additional improvements in track quality to where the slow order minutes were 43% lower than the First Quarter of 2004 for the 253 miles of trackage on the Joint Line. BNSF and UP have substantially increased capital expenditures to maintain the track averaging \$11 Million per year in 2003, increasing to an average \$19 Million per year in 2004 and 2005.

The current problems on the Joint Line did, contrary to your assertions, result from an abnormally large amount of precipitation in a very short period of time during mid-April to mid-May of 2005. The April/May precipitation in Gillette, WY, was 4.79 inches (versus 1.52 inches in 2004) and in Douglas, WY, was 3.67 inches (versus 1.32 inches in 2004) resulting in

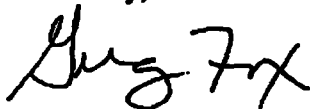
Gary Voigt  
November 18, 2005  
Page 2

shortened drying cycles at a critical point when the frost was leaving the ground. These events caused the soft track conditions which led to two derailments. The situation was also exacerbated by the accumulation of coal dust in the track structure. BNSF and UP are addressing this issue now with a maintenance plan to eliminate the coal dust contaminating the track. By year end we will have undercut approximately 71 miles of track and another 90 miles planned for 2006 to eliminate the contaminated ballast. BNSF and UP are also addressing the issue of preventing future accumulations of coal dust by working with members of the National Coal Transportation Association to find ways to reduce coal loss from freight cars.

Another inaccuracy in your letter is assertion that western railroads have failed to invest in capacity to haul PRB coal. Contrary to your contention, PRB production has grown by 220 million tons in the last 15 years and BNSF and UP have invested substantial sums in adding capacity in the PRB. BNSF and UP have spent over \$200 Million in capital to expand the Joint Line since 1994. In 2005, an additional 15 miles of triple track costing \$36 Million was completed and grading for an additional 18 miles for triple track capacity in 2006 at a cost of \$50 Million will be completed. In the last 12 years, BNSF has invested \$2.7 Billion dollars in capacity expansion for locomotives, cars, track and terminals. BNSF will continue to invest in PRB coal capacity provided there are adequate returns.

BNSF, like you, is anxious to make sure that the Joint Line continues to be able to move very large amounts of PRB coal in an efficient and timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Fox", written in a cursive style.

Gregory Fox

cc: Roger P. Nober - STB